

Members

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Rep. Ryan Dvorak
Sen. Luke Kenley
Sen. John Broden
Art Harris
Tobias Buck
Jeff Miller
Mark Stuaan
Sue Shadley
Mayor John Zumer
Mayor Shannon Buskirk
Jim Flannery
Carol McDowell
John Land
Gordon Durnil
Stephen Johnson
Tom Easterly
Robert Carter



ENVIRONMENTAL CRIMES TASK FORCE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

IDEM Staff
Sandra Flum
Bowden Quinn
Char Roller

Authority: P.L. 63-2005 (SEA 195-2005)

MEETING MINUTES¹

Meeting Date: June 22, 2005
Meeting Time: 10:00 AM
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. Luke Kenley; Sen. John Broden; Jeff Miller; Sue Shadley; Mayor John Zumer; Mayor Shannon Buskirk; Jim Flannery; Gordon Durnil; Stephen Johnson; Tom Easterly; Robert Carter.

Members Absent: Rep. Ryan Dvorak; Rep. Jackie Walorski; Tobias Buck; Art Harris; John Land; Carol McDowell; Mark Stuaan.

The meeting was called to order at 10:07 AM.

Minutes:

The minutes of the April 27 meeting were approved as submitted.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Discussion of preliminary draft environmental crimes bill:

Andy Hedges explained the process that he followed in drafting the bill. He began with the Illinois environmental crimes statute as a model but broadened the focus based on what other states have done. He incorporated comments from Sue Shadley and IDEM. In general, knowing or intentional unlawful acts that result in discharges to the environment and cause harm or the risk of harm are Class D felonies, and unlawful acts not resulting in discharges are Class A misdemeanors. Tampering with drinking water systems with the intent to cause bodily injury is a Class B felony, or a Class A felony if the tampering results in a death.

The task force raised the following issues during the subsequent discussion:

Definition of person: The task force may want to include the definition in the statute.

Corporate liability: Task force members discussed how the statute should be applied to corporate officers and employees. Miller suggested that language preventing unjust enrichment through illegal acts should be added.

Misstatements: Easterly suggested that misstatements made with a willful intent to hide illegal acts should be a felony rather than a misdemeanor. Johnson said that obstruction of justice charges might be made in such circumstances. Another possibility would be multiple charges as misdemeanors, which could increase the amount of time a person could be sentenced to prison. Sen. Kenley asked that Johnson work with Hedges to incorporate language that would address Easterly's concerns.

Showing of harm: The task force discussed whether causing harm or the risk of harm to a person or to the environment should be required for a felony. Shadley pointed out that there are substantial civil penalties for illegal discharges. She thought that felonies should be reserved for illegal acts that cause harm. Easterly and Johnson discussed the difficulty of showing harm in environmental cases. Presno pointed out that harm to the environment is almost entirely missing from the statute. Johnson suggested that any harmful discharge to the environment without a required permit or in violation of a permit could be made a felony. Shadley said that companies with complex operations often violate their permits; it is unavoidable. Hedges suggested that lack of harm to people or the environment could be a defense.

Mens rea: The task force discussed whether the requirement that a felonious act be knowing or intentional would protect against criminal charges being brought over inadvertent violations. Shadley pointed out that recklessness was included in only one instance in the draft language and suggested removing it. Miller said that the Illinois statute included recklessness.

Rules: Shadley also pointed out that there was only one instance in the draft of including a rules violation as a crime. She suggested removing it because ordinary citizens cannot be expected to be aware of all rule requirements.

Discussion of comments:

Task force members received copies of comments submitted by the following people: Roger Goldman, DNR; Welton (Art) Harris, absent task force member; Janet McCabe, IKE; Joe Miller, Rose Acre Farms; Justin Schneider, IFB; Mark Stuaan, absent task force member. Members discussed the following comments:

Art Harris: Harris pointed out that the draft language didn't include damage to the environment. He asked for stricter penalties for falsifying monitoring results and questioned how "serious bodily injury" would be defined.

Joe Miller: (not present at meeting) Miller also questioned the definition of bodily injury and suggested that it could lead to prosecutions of Concentrated Animal Feeding Operations (CAFOs) for air emissions that are not currently being regulated. He also raised the question of politics influencing prosecutorial decisions. Task force members discussed the roles of county prosecutors and the state attorney general's office. They agreed that the attorney general should have the option of declining a request for assistance from a county prosecutor. They discussed the possible reluctance of county prosecutors to file charges against large employers in their counties. Easterly said IDEM had the option of going to the U.S. attorney to seek prosecution.

Roger Goldman: Goldman suggested that violations of open burning and open dumping laws should be misdemeanors so county prosecutors would be more likely to bring charges. Johnson suggested that such acts could be infractions, a lesser charge, at least for first offenses with limited consequences. Goldman also reported on a phone conversation that DNR officials had with their counterparts in Illinois. The Illinois statute requires all state and local law enforcement officials to enforce the act and regulations under it. Johnson said he was dubious about allowing every law officer in Indiana to enforce every environmental crime.

Justin Schneider: Schneider supported gradations in types of crime according to the types of harm. He spoke against including rule violations as a crime, saying that it could lead to unjustified charges against CAFOs because of local opposition to them.

Conclusion:

Sen. Kenley said that the task force didn't have time to review the comments from McCabe and Stuaan at the meeting, but members should review them individually. He will meet with some members and Hedges to discuss revisions of the draft document based upon the comments submitted. He invited final comments from task force members and the audience. There were none.

He asked the members of the task force and interested parties to be prepared to review a second draft for discussion at the next meeting.

The next meeting will be on August 24, 2006, at the Statehouse, Room 431 at 10 a.m.

The meeting adjourned at 11:45 AM.